

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MIKE WARD)	
Claimant)	
VS.)	
)	Docket No. 251,185
FRANKLIN MACHINE)	
Respondent,)	
Uninsured)	
AND)	
)	
STAINLESS STEEL SYSTEMS, INC.)	
Respondent)	
AND)	
)	
COMMERCIAL CASUALTY INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Respondent Stainless Steel Systems, Inc., (Stainless) and its insurance carrier appealed the June 27, 2000 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

This is a claim for a series of accidents and repetitive use injuries to the upper extremities that allegedly began in September 1999 and continue through the present as claimant performs his regular job duties. The respondent Stainless Steel Systems, Inc., who took over the business operations of Franklin Machine on January 17, 2000, contends that it is unfair to assess liability against Stainless and its insurance carrier as claimant's injuries developed over a long period of time while claimant was working for Franklin Machine. Conversely, Franklin Machine contends that Stainless and its insurance carrier should be responsible for furnishing claimant the medical treatment that he now seeks.

After conducting a preliminary hearing on June 16, 2000, Judge Moore found that claimant continued to perform his regular job duties after Stainless took over Franklin Machine's operations. Citing the *Treaster*¹ and *Helms*² decisions, the Judge ordered Stainless and its insurance carrier to provide claimant medical treatment.

Stainless and its insurance carrier contend Judge Moore erred. They argue that claimant was clearly injured while working for Franklin Machine and that assessing liability against Stainless is inequitable and does not comport with the spirit of the Workers Compensation Act.

The only issue before the Appeals Board on this review is whether claimant sustained accidental injury on or after January 17, 2000, when Stainless took over business operations from Franklin Machine.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed.
2. Claimant worked for Franklin Machine as a machinist and a tool and die maker. On January 17, 2000, Stainless took over Franklin Machine's business operations.
3. Claimant has a history of upper extremity complaints. In 1991, claimant spoke with a doctor about pain and lack of grip in his right hand. In 1997, 1998, 1999, and in early January 2000, claimant complained to his chiropractor about bilateral upper extremity symptoms. On January 14, 2000, the chiropractor referred claimant to an orthopedic surgeon, Dr. J. Mark Melhorn.
4. Despite ongoing symptoms, claimant continued to perform his regular job duties. When Stainless took over Franklin Machine's business operations in January 2000, claimant continued to perform his regular duties until February 7, 2000, when he was promoted to working foreman. As of the June 16, 2000 preliminary hearing, claimant was continuing to work without accommodations and without medical restrictions despite the fact that surgery had been recommended but not authorized.
5. The Appeals Board finds that claimant continued to sustain injury to his upper extremities following Stainless' takeover in January 2000. Therefore, Stainless and its

¹ *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

² *Helms v. Tollie Freightways, Inc.*, 20 Kan. App. 2d 548, 889 P.2d 1151 (1995).

insurance carrier should be responsible for the reasonable and necessary medical treatment that claimant now needs.³

6. The Appeals Board adopts the findings and conclusions set forth in the preliminary hearing Order that are not inconsistent with the above.

WHEREFORE, the Appeals Board affirms the June 27, 2000 preliminary hearing Order entered by Judge Moore.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
Thomas A. Dower, Hutchinson, KS
D. Steven Marsh, Wichita, KS
Jeffrey E. King, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director

³ *Lott-Edwards v. Americold Corporation, et al.*, ____ Kan. App. 2d ____, ____ P.2d ____ (Docket No. 82,555; June 23, 2000).